

## DEPARTMENT OF CORRECTIONS



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February 22, 2007

Senator Carol Juneau  
Montana Senate  
PO Box 200500  
Helena, MT 59620-0500

RE: Senate Bill 454

Dear Senator Juneau:

At your request, I am providing statistics regarding offenders sentenced under 45-2-221 and 45-2-222, MCA. Since 1995, six men and one woman have been convicted under 45-2-221 and none under 45-2-222. Two were convicted of additional felonies and received five-year prison terms, one each in 2000 and 2001. Another offender convicted of an additional felony under 45-2-221 received a probationary sentence. Four received three-year deferred sentences and one received a five-year suspended sentence. Two of the probationary sentences were handed down in 1995 and one each in 2001, 2002, and 2004.

Thank you for addressing the Department of Corrections' concerns about Senate Bill 454 as it was originally drafted. I believe the discussions this week have resulted in an amended bill that (1) offers constructive alternatives to more prison time for those convicted of hate crimes, (2) enlightens legislators and the public about restorative justice, and (3) encourages interagency cooperation.

I have forwarded the amended bill to Director Mike Ferriter for his review. Please let me know if I can provide further information.

Sincerely,

Handwritten signature of Sally K. Hilander in cursive.

Sally K. Hilander  
Victim Information Specialist  
(406) 444-7461  
[shilander@mt.gov](mailto:shilander@mt.gov)

cc: Senator Kaufmann, Amanda Arnold, Mike Ferriter

**STATE OF MONTANA**  
**DEPARTMENT OF JUSTICE**  
**OFFICE OF CONSUMER PROTECTION AND VICTIM SERVICES**

Mike McGrath  
Attorney General



1712 9th Avenue  
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Helena, MT 59620-1410

**TO:** Senator Carol Juneau and Senate Judiciary Committee Members

**FROM:** Matthew Dale, Office of Consumer Protection & Victim Services *MD*

**DATE:** 20 February 2007

**RE:** Today's hearing on SB 454

On behalf of the Department of Justice, I apologize for a lack of representation at this morning's hearing. First thing this morning I was in front of the House Judiciary Committee testifying on HB 656, Representative Hollenbaugh's bill to fund the Office of Restorative Justice. Through a communication error, no other DOJ representative was assigned to Senate Judiciary. It was an oversight and again, I apologize.

This office is prepared to implement SB 454 to the extent we have the capacity to do so. We maintain a roster of all restorative justice programs across the state and have staff available to answer questions and make referrals. We have a solid structure in place to allow for communication with these programs and the courts.

What we do not have is the capability of "contracting with community-based programs to provide restorative justice programs..." as stated in Section 1, sub 3(a). Similarly, in sub (b) we do not have the capacity to "appoint one or more representatives of the class or group of persons against which the violation...in lieu of the victim's participation." These elements call for a level of authority that is not present in this office. At this time we are not able to compel either individuals or local programs to participate in any restorative justice process. We also have no funds available to contract with any restorative justice entity.

We are anxious to work with Senator Juneau and the Committee to implement the bill. We will take leadership to work with programs across the state to do so, with the limitations mentioned above.

**Democratic Women's Caucus**  
**60<sup>th</sup> Montana Legislature**  
**Helena, MT**

Dear Chairman Laslovich, and Members of the Senate Judiciary Committee:

RE: SB 454---Revising the offense of malicious intimidation or harassment to include sexual orientation, gender, and disability, revising the penalty for a restorative justice program as the enhancement for the sentence.

The Democratic Women's Caucus of the Montana State Legislature has identified SB 454 as one of its top issues for this session and we ask for your support of this legislation.


Montana's current law includes only race, creed, color, and national origin. SB 454 proposes to add gender, disability and sexual orientation to this list and we support this.

In addition, SB 454 includes provisions for restorative justice as a part of the healing process of a hate crime. Punishment is one strategy, but helping the victim as well as the offender through this process of restorative justice will emphasize healing the wounds of the victims, offenders and the communities.

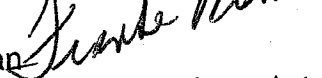
These victims could be our sisters, our children and grandchildren and our neighbors. We want a Montana where all its citizens can live knowing that there are laws that will protect them if they become a victim of a hate crime because of their gender, disability or sexual orientation.

Please support SB 454.

Sincerely,

  
Senator Carol Williams, Chair  
Democratic Women's Caucus

February 19, 2007

TO: Members of the Senate Judiciary Committee  
FROM: Representative Franke Wilmer, HD 64, Bozeman   
RE: Adding sexual orientation, gender, and disability to Hate Crimes Act

As former Chair of the Montana Human Rights Commission, a long-time human rights advocate, and a fellow legislator, I write in strong support of adding sexual orientation, gender, and disability as protected categories to existing Hate Crimes legislation. Montana would be the 25<sup>th</sup> state to add sexual orientation, the 21<sup>st</sup> state to add gender, and the 20<sup>th</sup> to include disability. Nationwide FBI statistics for 2004 indicate nearly 1200 individual incidents of hate crimes motivated by sexual orientation and 57 motivated by bias against the disabled. Let's join together to make all Montanans safe from violence, particularly violence motivated by hate and bias.



# Montana Human Rights Network

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Phone (406) 442-5506 • Fax (406) 442-5589

February 20, 2007

To: Senate Judiciary Members  
From: Montana Human Rights Network  
Subject: Support SB 454

The word "hate" itself can be misleading. The crimes we are talking about are more accurately called bias crimes. A hate crime is an act that is motivated by the perpetrator's bias against the group to which the victim belongs. Indeed, the perpetrator selects the victim, not because of any personal animosity toward the individual, but because the victim belongs to the despised group. Hate crimes are acts of terrorism used to keep members of the targeted group from participating in the democratic process.

An assault is equally as serious when committed against a white, straight male as any minority. Hate crime laws do not say the assault of a gay man is more serious. They say that, when a gay man is selected because he is gay (or a white man, because he is white), the harm is more far-reaching. Society has an interest in stamping out bigotry as well as crime and that should be acknowledged in the criminal justice system.

Hate crimes perpetuate bigotry and create a climate where more violence is likely to occur against persons in the same or other despised groups. They intimidate the whole community to which the victim belongs. Not only do the victims and their loved ones suffer, but fear strikes through the hearts of all those who belong to the same group as the victims, even if they are not acquainted. Finally, hate crimes tend to be more violent. Moreover, the harm done to the victim is deeper. The attack is aimed at the very identity of a person, wounding the spirit as well as the body.

The specific statuses (race, religion, creed, etc.) found in hate crimes statutes are there for a reason. There is a long history of perpetrators using these characteristics as the motivation to commit hate crimes. The current statuses are listed because we, as a society, recognized this bias-motivated violence and felt the need to condemn it. Listing the statuses in statute also reflects the lessons learned through civil rights law. While in theory current laws outlawed it, the Civil Rights Movement shined a spotlight on the areas where discrimination thrived. Civil rights law had to explicitly state the abuses it dealt with in order to try and correct them.

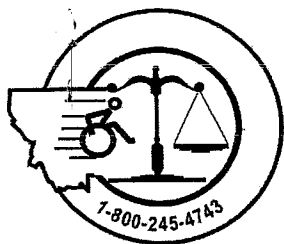
Civil rights law was a natural outgrowth of our country's evolution of law. The 13<sup>th</sup> Amendment to the U.S. Constitution abolished slavery. While that Amendment seemed to level the playing





field, the 14<sup>th</sup> Amendment was needed to specifically guarantee equal rights and application of the law. More than 100 years later, it became necessary to pass the Civil Rights Act to address the "Jim Crow" laws of the South. This evolution demonstrates how laws dealing with discrimination must directly name the injustice being committed. This applies to hate crimes laws as well, since a hate crime is a severe expression of discrimination.

At the Human Rights Network, we hear from members of the gay and lesbian community who are victims of hate crimes. We know these hate crimes happen. Law enforcement does not have the necessary tools to take action on these crimes, as Montana's current hate crimes statute does not include sexual orientation. From our allies, we know that people are also targeted by hate crimes for their gender and disability. We hope that you will vote for SB 454.



# MONTANA ADVOCACY PROGRAM, INC.

*The Civil Rights Protection & Advocacy System for the State of Montana*

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Great Falls

February 22, 2007

Senate Judiciary Committee  
Sen. Jesse Laslovich, Chairman

Re: Supplemental Testimony, SB 454

Dear Mr. Chairman and Members of the Senate Judiciary Committee:

As advocates for people with disabilities, the Montana Advocacy Program supports placing disability into MCA 45-5-221 and MCA 45-5-222 for two reasons:

1. crimes committed against people with disabilities because of their disabilities are especially reprehensible given that their disabilities often make them more vulnerable to crime; and
2. inclusion of disability in these provisions will encourage prosecutors to view crime against people with disabilities in a different way. As opposed to viewing the choice of a person with a disability as a crime victim as tragic, but somewhat unremarkable given the frequency of crime against people with disabilities, it will support the examination of this choice as a discriminatory one based upon the person's inclusion in a protected class.

I understand that the committee may be considering placing definitions into this bill. The definition of disability in state law that mirrors that in the Americans with Disabilities Act is found in the Montana Human Rights Act at MCA 49-2-101 (19).

Thank you for the opportunity to testify on this matter.

Sincerely,

  
Beth Brenneman  
Staff Attorney

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